CHAN FOO MENG & ORS.

v.

HUP SENG CO. LTD.

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED DZAIDDIN JC
[CIVIL SUIT NO. 681/1963]
24 MARCH 1981

LAND LAW: *Purchase of land by defendant company - Whether they purchased as trustees of plaintiffs.*

LAND LAW: *Shareholders - Distinction between "owner of land" and "shareholder of land".*

LAND LAW: *Indefeasibility of title - Registered proprietor of land - Exceptions to indefeasibility of title - National Land Code, s. 340*

In this case the plaintiffs sought a declaration that the defendants are trustees of the plaintiffs of a piece of land and also for an order that the defendants do execute and register a valid and registrable transfer of the land in the names of the plaintiffs or alternatively for a vesting order.

Held:

[1] The plaintiffs have failed to prove that the defendant company is the trustee of the plaintiffs. On the other hand, the plaintiffs as admitted by the defence, are shareholders of the defendant company. It follows that their right as shareholders is something different from being part owners of the undertaking.

[2] Section 340 of the National Land Code expressly provides that the title of a person registered as proprietor of any land shall be indefeasible. The only exceptions are where there has been fraud, misrepresentation, forgery or an *ultra vires* acquisition purporting to have been made under statutory authority. In this case none of these exceptions apply.

[Plaintiffs' claim dismissed with costs.]

Cases referred to:
Hup Seng Company Ltd. v. Chin Yin & Ors. [1962] 28 MLJ 371
Short v. Treasury Commissioners [1948] 1 KB 116
Short's case [1948] AC 534
Macaura v. Northern Assurance Co. Ltd. [1925] AC 619
EBM Co. Ltd. v. Dominion Bank [1937] 3 All ER 555

Legislation referred to:
National Land Code 1965, s. 340

For the plaintiffs - Dato' Morris Edgar; M/s. Morris Edgar (Clough Thuraisingham with him)
For the defendants - Wong Chong Wah; M/s. Skrine & Co.

JUDGMENT

Mohamed Dzaiddin JC:

In this case the plaintiffs are seeking a declaration that the defendants are trustees of the plaintiffs of a piece of land held under Selangor Certificate of Title for Lot 1995 in the mukim of Petaling in the district of Kuala Lumpur.

By their amended statement of claim the plaintiffs alleged that the said property was purchased by them under an agreement dated 16 May 1959, AB6, which should be subdivided in the manner mentioned in the correspondences exhibited as AB1, AB2 and AB3. Consequently they are asking the Court to order the defendant company to execute and register a valid and registrable transfer of the land in the names of plaintiffs or alternatively for a vesting order.

Originally there were 69 plaintiffs but were subsequently reduced to 15.

The facts of the case are as follows. All the original 69 plaintiffs live on the said land and paying ground rent on their respective plots to the registered proprietor, one Williamina Anna Harriet Brown. In 1958, desiring to leave the country she decided to sell the said land to these tenants including the trustees of Yik Min school. The price agreed between the tenants and proprietor for the remaining portion of the said land consisting of an area of 29 acres and 15 poles (hereinafter referred to as "the remaining portion") was RM58,000. On 18 April 1958 a sale agreement was executed between Mrs. Brown and Tai Wah, Chin Yin, Chin Yoon Wood, Thong Seong Choon and Chin Hon on behalf of all the purchasers. This agreement is mentioned in the agreement in Exhibit AB6. It was a term of the said agreement that the vendor undertook to subdivide the said land into two lots, one for the school and the other, the remaining portion and to obtain the issue of a separate issue document of title to be registered in the individual names of the purchasers. Subsequently the remaining portion was transferred by Mrs. Brown to Tai Wah, Chin Yoon Wood and Chin Hon.

In the meantime, on 28 July 1960 the defendant company was incorporated with a nominal share capital of RM75,000 divided into 75,000 shares of RM1 each. The object of this company was to acquire the remaining portion by entering into an agreement with the four named persons who were then the registered proprietors. The purchase agreement was entered into by the four named persons and the defendant company on 9 September 1960. On 20 October 1960 the remaining portion was registered in the name of defendant company. The consideration for the sale was the sum of RM58,000 which should be paid and satisfied by the allotment to the four named persons and all their nominees of 58,000 fully paid up ordinary shares in the capital of the company to which each of four named persons was to receive 14,500 fully paid-up shares.

On the same date all the four named persons wrote to the defendant company requesting the defendant company to allot to the four persons named in the said notices the shares of the company.

Some of the plaintiffs gave evidence. From the evidence, I formed the view that they were not happy with the allotment of shares in return for the money which they said was the purchase price of the land. They said that the original idea was that after the purchase, the land was to be subdivided among themselves and each tenant was to get a separate title to the portion which he occupied. This evidence is supported by the three letters referred to and exhibited as AB1, AB2 and AB3. The original intention to give them separate titles was also confirmed by Mrs. Coles (PW2), the daughter of the original proprietor, Mrs. Brown. The plaintiffs also testified that the four named persons to whom the land was transferred in the first instance were trustees for themselves and the other purchasers. There was no mandate by the subscribers that the defendant company should be formed and that the land should be transferred by the four named persons to the defendant company. Under cross-examination, both PW1 and PW3 who

are among the purchasers even denied that they were shareholders of the company. PW1 also stated that only during the trial that he knew the trustees had transferred the land to the defendant company in exchange for their shares.

Having listened to the plaintiff's evidence, I share the view of Suffian J (as he then was) in *Hup Seng Company Ltd v. Chin Yin & -Ors.* [1962] 28 MLJ 371 @ 372 when he stated that:

> Most of the trouble here arose in my view out of misunderstanding. All the persons involved are uneducated and are unfamiliar with the intricacies of company Law; and the vast majority of them are frugal Chinese who, I suspect, are highly suspicious of each other. None of the directors of the company who gave evidence denied that it was the intention of the company to look after the interests of the persons who had subscribed to pay the purchase price. Be that as it may, some of the subscribers feared for the safety of their money and of their interests in the land.

The defence called the secretary of the defendant merely to produce a certified true copy of the company's memorandum and articles of association, copies of the agreements which I have referred to above and also the register of members of the company. According to the secretary's record both PW1 and PW3 were allotted shares in the defendant company, PW1 having 930 shares and PW3 450 shares.

In my judgment, the plaintiffs have failed to prove that the defendant company is the trustee of the plaintiffs. Clearly, the defendant company purchased the said land from the four named persons as purchasers and not as trustee. It is a direct sale. On the other hand, the plaintiffs as admitted by the defence, are shareholders of the defendant company. It follows that their right as shareholders is something different from being part owners of the undertaking. "The undertaking is something different from the totality of the shareholders." *Short v. Treasury Commissioners* [1948] 1 KB 116 per Evershed LJ @ 122. The right of the shareholders is succintly explained by Lord Porter in *Short's case* in the House of Lords reported in [1948] AC 534 where he said:

> In the case of land the owner possesses a tangible asset whereas a shareholder has no direct share in the assets of a company, he has such rights as the memorandum and articles give him and nothing more.

In *Macaura v. Northern Assurance Co. Ltd.* [1925] AC 619 it was held that the sole shareholder in a company, who was also its main creditor, had no insurable interest in the property of the company. Lord Buckmaster said *ibid*, 626

> Now, no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.

In *EBM Co. Ltd. v. Dominion Bank* [1937] 3 All ER 555 Lord Russell, giving the advice of the Privy Council, rejected the suggestion that the assets of a company might in substance be regarded as the assets of the three individuals who constituted its main shareholders. He said that it was

> of supreme importance that the distinction should be clearly marked, observed and maintained between an incorporated company's legal entity and its actions, assets, rights and liabilities on the one hand, and the individual shareholders and their actions, assets, rights and liabilities on the other hand.

The defendant also raised the question of indefeasibility of title as pleaded in para. 4 of the defence. To my mind the law on this point is very clear. Section 340 of the National Land Code expressly provides that the title of a person registered as proprietor of any land shall be indefeasible. The only exceptions are where there has been fraud, misrepresentation, forgery or an *ultra vires* acquisition purporting to have been made under statutory authority. In my view, none of these exceptions apply to this case.

I therefore dismiss the plaintiff's claim with costs.

Also found at [1987] 2 CLJ 430